

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
	)	CASE NO. BK14-42112
CHRISTIE M. PARKER and	)	A15-4018
ROBERT JOHN PARKER,	)	4:14CV3195
	)	
Debtor(s).	)	CHAPTER 13
ROBERT J. PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CRETE CARRIER CORPORATION,	)	
	)	
Defendant.	)	

REPORT & RECOMMENDATION

This matter is before the court upon referral by the United States District Court for the District of Nebraska (Fil. No. 1).

Robert J. Parker filed a complaint in the District Court of Lancaster County, Nebraska in September 2014, alleging violations of the Americans with Disabilities Act. Subsequently, the defendant removed the case to the United States District Court for the District of Nebraska. The parties are currently in the discovery phase of the litigation, with a jury trial scheduled for September 2015.

Mr. Parker and his wife filed a Chapter 13 bankruptcy petition in December 2014. Their counsel filed a suggestion of bankruptcy in the district court lawsuit and requested a stay of all further proceedings until they could obtain an order from the bankruptcy court establishing that the automatic stay of 11 U.S.C. § 362(a) does not apply or granting relief from such automatic stay.

In response to the suggestion in bankruptcy, the district court referred the case to the bankruptcy court. However, Local Rule NEGenR 1.5(a)(1) was amended in December 2014 to allow the district court to stay the litigation as against the party in bankruptcy until a party requests referral of the case to the bankruptcy court. Here, no party has requested such a referral. Further, the case involves issues of federal law not commonly dealt with by this court and the plaintiff has requested a jury trial on those issues, which is more appropriately held in district court. These reasons all favor the return of the case to the district court.

In addition, the debtor in bankruptcy is the plaintiff in this proceeding seeking damages against the defendant. As such, this proceeding is not an action against the debtor and is not subject to the

automatic stay of 11 U.S.C. § 362(a). The cause of action is, however, property of the bankruptcy estate. Debtor must seek permission of the bankruptcy court to employ counsel to pursue the cause of action in accordance with Local Rules and the Federal Rules of Bankruptcy Procedure.

Accordingly, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this case and stay all proceedings until such time as the plaintiff or other appropriate party in interest obtains an order of the bankruptcy court authorizing the employment of plaintiff's attorney to proceed with the litigation in district court.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: April 17, 2015.

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino  
Chief Judge

Notice given by the Court to:

Joy Shiffermiller  
Nicole S. Bogen  
Sierra M. Falter  
Kathleen Laughlin  
U.S. Trustee